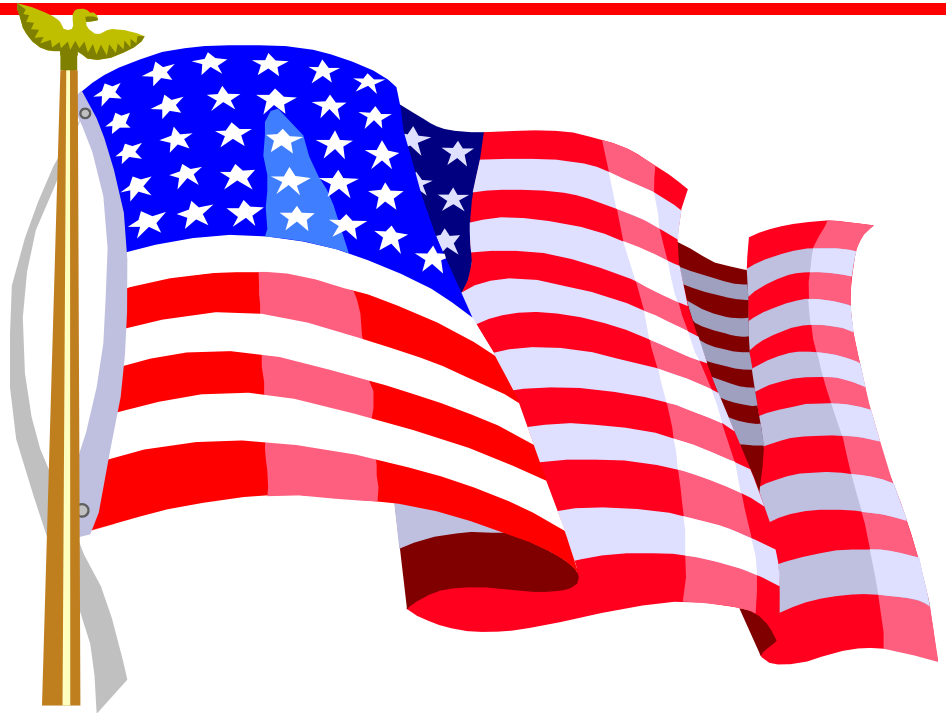


OVERVIEW OF THE MILITARY JUSTICE SYSTEM

Outline of Instruction

- Reference
- Article 15, UCMJ – NJP
  - What it is
  - Who can issue
  - Proceedings
  - Punishments
  - Appeal
- Courts-Martial
  - Levels
  - Anatomy of a Trial
  - Effects of Sentencing
- Conclusion

MANUAL

FOR

COURTS-MARTIAL

UNITED STATES

(2002 EDITION)

The 2000 Edition of the MCM is a complete revision of the 2000 MCM incorporating all Executive Orders (EO) through 11 Apr 2002 (EO 12473 prom-ulgating the 1984 MCM; EO 12484, 15 Nov 84; EO 12550, 19 Feb 86; E0 12586, 3 Mar 87; EO 12708, 23 Mar 90; EO 12767, 27 Jun 91; EO 12888, 23 Dec 93; EO 12936, 10 Nov 94; EO 12960, 12 May 95; EO 13086, 27 May 98; EO 13140, 6 Oct 99; EO 13262, 11 Apr 02). Copies of each Executive Order can be found in Appendix 25.

NONJUDICIAL PUNISHMENT
Article 15, UCMJ

- NJP is NOT a Federal conviction, and accepting NJP is NOT an admission of guilt.

- It is a form of NJP that is designed to **correct, educate, and reform** a Marine without the stigma of a conviction.

- Appropriate for MINOR offenses

NJP HEARING

- Purpose: Determine if the accused committed the offense, and if so, impose punishment.

- Commander's Action:
  - Consider the evidence presented
  - Decide guilt or innocence
  - Impose appropriate punishment
  - Explain rights to appeal

- Standard: Preponderance of Evidence

RIGHTS AT NJP PROCEEDING

- Demand trial by court-martial
- Remain silent; present case to commander
- Examine evidence
- Appeal to higher commander
- Spokesperson at hearing

- Although not rights under Part V, MCM:
  - Marines may ask for open/closed hearing. CO's discretion.
  - Generally, we provide opportunity to consult with counsel

NJP PUNISHMENTS

- **Company grade**
  - Reduction: Few Co grade officers have authority
  - Restriction: 14 days and/or 14 days extra duty
  - Forfeitures: 7 days pay
  - Reprimand/Admonition

- **Field grade**
  - Reduction:
    - E-4 and below can be reduced one grade**
  - Restriction: 60 days, OR, with extra duty, 45 days of each
  - Forfeitures: ½ of 1 month's pay for 2 months
  - Reprimand/Admonition

**must have promotion authority

NJP APPEALS

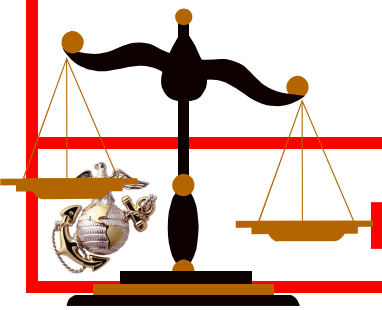
- Procedure: **Written appeal** submitted thru imposing CO
- Appellate Authority: next higher commander
- Actions on Appeal:
  - Approve punishment
  - Mitigate (lessen)
  - Remit (return to status quo)
  - Suspend (probation)

  MAY NEVER INCREASE PUNISHMENT
- NJP may be set aside

JUDICIAL PUNISHMENT
Trial by Courts-Martial

Levels of Court-Martial:

- Summary Courts-Martial (SCM)
- Special Courts-Martial (SPCM)
- General Courts-Martial (GCM)



ANATOMY OF TRIAL

- Investigation (DD Form 2701)
- Pretrial Restraint (also MPOs)
- Preferral of Charges (DD Form 2702)
- Article 32 Investigation
  - Role of Victims and Witnesses
- Referral of Charges
- Pretrial Negotiations
  - Victims have statutorily designated role
- Arraignment
  - Forum Selection
  - Motions/Pleas

ANATOMY OF TRIAL

- Voir Dire
- Opening Statements
- Prosecution Evidence
- Defense Evidence
- Prosecution Rebuttal (Surrebutal as permitted)
- Argument
- Deliberation
- Findings (DD Form 2703)

Victim/Witness Presence

ANATOMY OF TRIAL

- Prosecution Sentencing Evidence
  - Victim Impact Statements
- Defense Sentencing Evidence
- Rebuttal (Surrebuttal as permitted)
- Deliberation
- Announcement of Sentence (DD Form 2704)
  - Effective dates, financial impacts, etc
- Post-Trial Submissions (Requests for Clemency)
- Action
- Appeal

EFFECTS OF SENTENCING

- Reductions in Rank:
  - Adjudged:
    - Effective: earlier of 14 days after date of sentence OR approval of sentence by the convening authority
  - Automatic: Article 58a, UCMJ
    - Sentence that includes DD/BCD, confinement, OR hard labor without confinement
    - Effective: date sentence approved by the convening authority
  - Deferment:
    - At request of accused
    - Anytime until action on sentence taken by the convening authority
    - If approved, may be rescinded

EFFECTS OF SENTENCING

- Forfeitures:
  - Adjudged:
    - Effective: earlier of 14 days after announcement of sentence OR action
    - Applies to pay and allowances accruing on and after the date on which
      the sentence takes effect
  - Automatic: Article 58b, UCMJ
    - Sentence that includes:
      (1) Confinement for more than 6 months or death; OR
      (2) Confinement for 6 months or less AND DD/BCD/Dismissal
    - SPCM = 2/3 pay during period of confinement
    - GCM = all pay and allowances during period of confinement
    - Effective: earlier of 14 days after announcement of sentence OR Action

EFFECTS OF SENTENCING

- Forfeitures (cont'd):
  - Deferment:
    - At request of the accused
    - Until convening authority takes action
    - May be rescinded
  - Waiver:
    - For accused with dependents (no application of accused required)
    - Convening authority taking action may waive any or all of the automatic forfeitures
    - Not to exceed 6 months
    - Paid to the dependents

*** Maximize receipt of $ by dependents: ***

✓ Deferment of adjudged and automatic forfeitures until Action

✓ Waiver for 6 months to dependents

EFFECTS OF SENTENCING

- Discharges/Dismissal:

  For domestic violence cases, Transitional Compensation:

  -Enacted to encourage DV victims to report w/o fear of loss of income

  -Eligibility requirements:

    -Member notified of adsep with DV basis

    -CA approves a punitive discharge for DV offense

    -Recipient cannot reside with offender

  -Provides 12 to 36 months of compensation

  -Typically, a victim advocate will complete paperwork

QUESTIONS??